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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,408	04/01/2004	Patricia L. Gardner	02-014-01 (IDRF118)	7986
25681 7590 08/16/2007 ORMISTON & MCKINNEY, PLLC 802 W. BANNOCK STREET, SUITE 400 P.O. BOX 298 BOISE, ID 83701-0298			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/815,408

Applicant(s)

GARDNER ET AL.

Examiner

Joseph F. Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

In view of the Board of Patent Appeals and Interference's decision entered on 06 April 2007, PROSECUTION IS HEREBY REOPENED.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,067,678 to Trevino in view of U.S. Patent No. 6,378,149 B1 to Sanders et al.

Trevino discloses a holder that is basically the same as that recited in claims 1, 5, and 6 except that the body's recess lacks the specified angular orientations, as recited in the claims. See Figure 1 of Trevino for the teaching that the holder has a recess therein to support a user's torso and legs that includes a first recess configured to support the user's torso and second recesses adjoining the first recess and configured to support the user's legs. See Figures 8 and 9 of Trevino for the teaching that the holder may be sized to accommodate an infant. Sanders et al. show a holder similar to that of Trevino wherein the holder has a body (Fig. 4) is configured to support a user's torso and legs such that the thighs extend out from the torso at an angle in the range of 70°-120° (see column 4, lines 15-24) and incline relative to the torso at an

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angle in the range of  $20^{\circ}$ - $50^{\circ}$  (see column 4, lines 48-53). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the holder of Trevino such that the body's recess is configured such that the thighs extend out from the torso at an angle in the range of  $70^{\circ}$ - $120^{\circ}$  and incline relative to the torso at an angle in the range of  $20^{\circ}$ - $50^{\circ}$ , such as the holder disclosed by Sanders et al. One would have been motivated to make such a modification in view of the suggestion in Sanders et al. that the specified angular orientations allow the patient's legs to be raised and fully abducted.

3. Claims 1, 2, 5, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over surgical chair shown in <http://www.noharmm.org/instruments.htm> in view of U.S. Patent No. 3,729,752 to Huggins and U.S. Patent No. 4,108,168 to Craig.

The surgical chair of [www.noharmm.org](http://www.noharmm.org) teaches an infant holder that is basically the same as that recited in claims 1, 2, 5, 6, and 8 except that the angle ranges of the torso and legs relative to the torso are not specified, as recited in the claims. The surgical chair of [www.noharmm.org](http://www.noharmm.org) (see Diagram A below) has a body with a recess therein configured to support an infant's torso and legs wherein the thighs extend out from the torso at an angle and incline relative to the torso at an angle wherein the recess includes a first recess configured to support the infant's torso and second recesses adjoining the first recess and configured to support the infant's legs.



Diagram A - Figure from <http://www.noharmm.org/instruments>

Huggins shows an infant holder similar to that of Diagram A wherein the infant holder has a body (see Fig. 1) with a recess therein configured to support an infant's torso and legs wherein the thighs extend out from the torso at an angle and incline relative to the torso at an angle of about 30 degrees (see column 2, lines 61-64).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the infant holder of Diagram A such that the recess is configured to incline an infant's torso and legs at an angle of about 30 degrees, such as the infant holder disclosed by Huggins. One would have been motivated to make such a modification in view of the suggestion in Huggins that the legs of an infant being inclined at an angle of 30 degrees aids in straightening the infant's back and strengthens the infant's leg muscles.

Craig shows an infant holder similar to that of Diagram A wherein the infant holder has a body (see Fig. 1) configured to support an infant's torso and legs wherein the thighs

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extend out from the torso at an angle of about 90 degrees (see column 2, lines 57-62). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the infant holder of Diagram A such that the recess is configured to support an infant's torso and legs at an angle of about 90 degrees, such as the infant holder disclosed by Craig. One would have been motivated to make such a modification in view of the suggestion in Craig that the frog abduction position allows an infant's hip flexion to be an extended abducted internally rotated position.

4. Claims 3, 4, 7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the surgical chair shown in <http://www.noharmm.org/instruments.htm> in view Huggins and Craig as applied to claims 1, 2, 5, 6, and 8 above, and further in view of U.S. Patent No. 4,631,766 to Semmler et al.

The surgical chair of [www.noharmm.org](http://www.noharmm.org) teaches an infant holder that is basically the same as that recited in claims 3, 4, 7, and 9-11 except that angle ranges for the first portion/recess and for the calves relative to the leg are not specified, as recited in the claim. See Diagram A for the teaching that the first recess inclines relative to the horizontal. Semmler et al. show an infant holder similar to that of Diagram A wherein the infant holder (see Fig. 1) has a recess configured to support an infant's torso and legs such that the recess has a first recess to support the infant's torso and second recesses to support the infant's legs. Semmler et al. teach that a first recess inclined relative to the horizontal encourages visual stimulus, and that the calves extending out and declined from the thighs retains the infant's legs in alignment with the torso

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preventing flailing. While the claimed angle ranges are not specifically recited, modifying these angles would have been obvious at the time of Applicant's invention because the use of optimal workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the angle of inclination and the angle of the infant's calves relative to the thighs since the Applicant has not disclosed that having the specific angle ranges solves any stated problem and it appears that the recesses would perform equally well with any well known angles used in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the infant torso of Diagram A such that the first portion/recess inclines relative to the horizontal at an angle in the range of  $5^{\circ}$ - $20^{\circ}$  and that the infant's calves extend out from the thighs at an angle of about  $90^{\circ}$  and decline relative to the thighs at an angle of about  $10^{\circ}$ , such as the infant holder disclosed by Semmler et al. One would have been motivated to make such a modification in view of the suggestions of Semmler et al, set forth above.

### ***Response to Arguments***

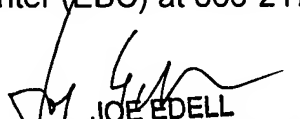
5. Applicant's arguments filed 09 March 2006 and 31 July 2006, with respect to the rejection of claim(s) 1-4 under 35 U.S.C. 102(b) and to the rejection of claims 5-11 under 35 U.S.C. 103(a) have been considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection is made as set forth above.

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**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOE EDELL  
PRIMARY EXAMINER

Joe Edell  
August 14, 2007

A Technology Center Director or designee has approved of reopening prosecution by signing below:

WYNN W. COGGINS  
TECHNOLOGY CENTER DIRECTOR

